

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE MARCH 15, 2016

**SENATE BILL**

**No. 938**

---

**Introduced by Senator Jackson**  
**(Coauthor: Senator Wieckowski)**

February 2, 2016

---

An act to amend Section 2356.5 of the Probate Code, relating to conservatorships.

LEGISLATIVE COUNSEL'S DIGEST

SB 938, as amended, Jackson. Conservatorships: psychotropic ~~drugs~~ *medications*.

Existing law authorizes a conservator to place a conservatee in a secured perimeter residential care ~~facility~~, *facility for the elderly*, as specified, or to ~~administer~~ *authorize the administration of* certain prescribed medications upon a court's finding that among other things, the conservatee has dementia and a functional impairment. Existing law requires certain findings to be made by the court for each type of authority sought by the conservator and requires a petition for authority to be supported by a declaration of a licensed physician or psychologist, as specified, regarding these findings.

This bill would replace references to the term dementia in these provisions with major neurocognitive disorders ~~(MNCDs)~~ *(MNCDs)*, *as defined*. The bill would require ~~petitions~~ *a petition* requesting the authority to administer ~~certain prescribed medications~~ *psychotropic medications, as defined*, to be supported by a declaration of a physician or psychologist that includes specified information, including, among other things, the recommended course of medication, the expected effects of the recommended medication on the conservatee's overall

mental health and treatment plan, including how the medication is expected to improve the conservatee's symptoms, and a description of the potential side effects of the recommended medication. The bill would require the Judicial Council, on or before July 1, 2017, to adopt rules of court and develop appropriate forms for the implementation of these provisions, as specified. The bill would make additional findings and declarations of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2356.5 of the Probate Code is amended  
2 to read:  
3 2356.5. (a) The Legislature hereby finds and declares:  
4 (1) That conservatees with major ~~or mild~~ neurocognitive  
5 disorders (MNCDs), as defined in the last published edition of the  
6 "Diagnostic and Statistical Manual of Mental Disorders," should  
7 have a conservatorship to serve their unique and special needs.  
8 (2) Common forms of MNCDs are known as Alzheimer's  
9 disease, vascular dementia, dementia with Lewy bodies, Parkinson  
10 dementia, frontotemporal dementia, and mixed dementia.  
11 (3) That, by adding powers to the probate conservatorship for  
12 conservatees with MNCDs, their unique and special needs can be  
13 met, and the basic dignity and rights of the conservatee can be  
14 safeguarded.  
15 ~~(4) Psychotropic medications or psychotropic drugs are those~~  
16 ~~medications administered for the purpose of affecting the central~~  
17 ~~nervous system to treat psychiatric disorders or illnesses.~~  
18 ~~(5)~~  
19 (4) Psychotropic medications ~~are often~~ *can be* misused for  
20 people with MNCDs to control behavior that conveys pain, distress,  
21 or discomfort and the administration of psychotropic medications  
22 has been and can be abused by those who prescribe and administer  
23 these medications.  
24 ~~(6)~~  
25 (5) Since 2005, the federal Food and Drug Administration has  
26 required the packaging of all antipsychotic medications, which  
27 fall under a class of psychotropic medication, to contain a black

1 box warning label that the medication significantly increases the  
2 risk of death for elderly people with MNCDs.

3 ~~(7) Recent studies have shown that, in many instances,~~  
4 ~~psychotropic drugs are outperformed by placebos and can actually~~  
5 ~~worsen the cognitive ability of a person with an MNCD.~~

6 ~~(8)~~

7 (6) Therefore, granting powers to a conservator to authorize  
8 these medications for the treatment of *a person with an MNCD*  
9 requires the protections specified in this section.

10 (b) *For the purposes of this section, “MNCD” means a major*  
11 *neurocognitive disorder, as defined in the latest published edition*  
12 *of the “Diagnostic and Statistical Manual of Mental Disorders.”*

13 ~~(b)~~

14 (c) Notwithstanding any other law, a conservator may authorize  
15 the placement of a conservatee in a secured perimeter residential  
16 care facility for the elderly operated pursuant to Section 1569.698  
17 of the Health and Safety Code, and which has a care plan that  
18 meets the requirements of Section 87705 of Title 22 of the  
19 California Code of Regulations, upon a court’s finding, by clear  
20 and convincing evidence, of all of the following:

21 (1) The conservatee has an ~~MNCD as defined in the last~~  
22 ~~published edition of the “Diagnostic and Statistical Manual of~~  
23 ~~Mental Disorders.” MNCD.~~

24 (2) The conservatee lacks the capacity to give informed consent  
25 to this placement and has at least one mental function deficit  
26 pursuant to subdivision (a) of Section 811, and this deficit  
27 significantly impairs the person’s ability to understand and  
28 appreciate the consequences of his or her actions pursuant to  
29 subdivision (b) of Section 811.

30 (3) The conservatee needs *or would benefit from* a restricted  
31 and secure environment, as demonstrated by evidence presented  
32 by the physician or psychologist referred to in paragraph (3) of  
33 subdivision ~~(e)~~. *(f)*.

34 ~~(4) The court finds that the proposed placement in a locked~~  
35 ~~facility~~ *secured perimeter residential care facility for the elderly*  
36 *is the least restrictive placement appropriate to the needs of the*  
37 *conservatee.*

38 ~~(e)~~

39 (d) Notwithstanding any other law, a conservator of a person  
40 may authorize the administration of psychotropic medications to

1 a conservatee with an MNCD, upon a court's finding, by clear and  
2 convincing evidence, of all of the following:

3 (1) The conservatee has an ~~MNCD, as defined in the last~~  
4 ~~published edition of the "Diagnostic and Statistical Manual of~~  
5 ~~Mental Disorders."~~ MNCD.

6 (2) The conservatee lacks the capacity to give informed consent  
7 to the administration of psychotropic medications ~~for the his or~~  
8 ~~her treatment of an MNCD~~; and has at least one mental function  
9 deficit pursuant to subdivision (a) of Section 811, and this deficit  
10 or deficits significantly impairs the person's ability to understand  
11 and appreciate the consequences of his or her actions pursuant to  
12 subdivision (b) of Section 811.

13 (3) The conservatee needs *or would benefit from* appropriate  
14 medication as demonstrated by evidence presented by the physician  
15 or psychologist referred to in paragraph (3) of subdivision ~~(e)~~. *(f)*.

16 ~~(d)~~  
17 *(e)* Pursuant to subdivision (b) of Section 2355, in the case of  
18 a person who is an adherent of a religion whose tenets and practices  
19 call for a reliance on prayer alone for healing, the treatment  
20 required by the conservator under subdivision ~~(e)~~ *(d)* shall be by  
21 an accredited practitioner of that religion in lieu of the  
22 administration of medications.

23 ~~(e)~~  
24 *(f)* A petition for authority to act under this section is governed  
25 by Section 2357, except:

26 (1) The conservatee shall be represented by an attorney pursuant  
27 to Chapter 4 (commencing with Section 1470) of Part 1. Upon  
28 granting or denying authority to a conservator under this section,  
29 the court shall discharge the attorney or order the continuation of  
30 the legal representation, consistent with the standard set forth in  
31 subdivision (a) of Section 1470.

32 (2) The conservatee shall be produced at the hearing, unless  
33 excused pursuant to Section 1893.

34 (3) The petition requesting authority under subdivision ~~(b)~~ *(c)*  
35 ~~or (e)~~ *(d)* shall be supported by a declaration of a physician, or a  
36 psychologist within the scope of his or her licensure, regarding  
37 each of the findings required to be made under this section for any  
38 power requested, except that the psychologist has at least two years  
39 of experience in diagnosing MNCDs. The supporting declaration

1 for a petition requesting authority under subdivision ~~(e)~~ (d) shall  
2 also include all of the following:

3 (A) A description of the conservatee's diagnosis and *a*  
4 *description of the conservatee's* behavior.

5 (B) The recommended course of medication.

6 (C) A description of the pharmacological and  
7 nonpharmacological treatments and medications that have been  
8 previously used or proposed, the less invasive treatments or  
9 medications used or proposed, and why these treatments or  
10 medications have not been or would not be effective in treating  
11 the conservatee's symptoms.

12 (D) The expected effects of the recommended medication on  
13 the conservatee's overall mental health and treatment plan,  
14 including how the medication is expected to improve the  
15 conservatee's symptoms.

16 (E) A description of the potential side effects of the  
17 recommended ~~medication~~. *medication, including any black box*  
18 *warnings issued by the federal Food and Drug Administration as*  
19 *defined in Section 201.57(c)(1) of Title 21 of the Code of Federal*  
20 *Regulations.*

21 (F) Whether the conservatee and his or her attorney have had  
22 an opportunity to provide input on the recommended medications.

23 (4) On or before July 1, 2017, the Judicial Council shall adopt  
24 rules of court and develop appropriate forms for the implementation  
25 of this section, and shall provide guidance to the court on how to  
26 evaluate the request for authorization, including how to proceed  
27 if information, otherwise required to be included in a request for  
28 authorization under this section, is not included in a request for  
29 authorization submitted to the court.

30 (5) The petition may be filed by any of the persons designated  
31 in Section 1891.

32 ~~(f)~~

33 (g) The court investigator shall annually investigate and report  
34 to the court every two years pursuant to Sections 1850 and 1851  
35 if the conservator is authorized to act under this section. In addition  
36 to the other matters provided in Section 1851, the conservatee shall  
37 be specifically advised by the investigator that the conservatee has  
38 the right to object to the conservator's powers granted under this  
39 section, and the report shall also include whether powers granted  
40 under this section are warranted. If the conservatee objects to the

1 conservator's powers granted under this section, or the investigator  
2 determines that some change in the powers granted under this  
3 section is warranted, the court shall provide a copy of the report  
4 to the attorney of record for the conservatee. If no attorney has  
5 been appointed for the conservatee, one shall be appointed pursuant  
6 to Chapter 4 (commencing with Section 1470) of Part 1. The  
7 attorney shall, within 30 days after receiving this report, do one  
8 of the following:

9 (1) File a petition with the court regarding the status of the  
10 conservatee.

11 (2) File a written report with the court stating that the attorney  
12 has met with the conservatee and determined that the petition  
13 would be inappropriate.

14 ~~(g)~~

15 *(h)* A petition to terminate authority granted under this section  
16 shall be governed by Section 2359.

17 ~~(h)~~

18 *(i)* Nothing in this section shall be construed to affect a  
19 conservatorship of the estate of a person who has an MNCD.

20 ~~(i)~~

21 *(j)* Nothing in this section shall affect the laws that would  
22 otherwise apply in emergency situations.

23 ~~(j)~~

24 *(k)* Nothing in this section shall affect current law regarding the  
25 power of a probate court to fix the residence of a conservatee or  
26 to authorize medical treatment for any conservatee who has not  
27 been determined to have an MNCD.

28 *(l)* For purposes of this section, "psychotropic medications"  
29 includes, but is not limited to, anxiolytic agents, antidepressants,  
30 mood stabilizers, antipsychotic medications, anti-Parkinson agents,  
31 hypnotics, and psychostimulants. "Psychotropic medications"  
32 does not include medications approved by the federal Food and  
33 Drug Administration for the treatment of an MNCD.